IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17/9/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.6347 OF 2001

M.Sakthivel ... Petitioner

-Vs-

1. Union of India
rep. by the Secretary
to the Government of India,
Ministry of Defence,
New Delhi.

2. Officer Incharge,
Madras Engineer Group,
Record Office,
Post Bag No.4201,
Bangalore-560 042.

3. The Chief Controller of
Defence Accounts,
Draupadi Ghat (Pension)
Allahabad,
Uttar Pradesh. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : Ms.Ebsiba

For respondents: Mr.V.Balasubramanian,
S.C.G.S.C.

:O R D E R

The above Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in the proceedings No.AT/5/IV/5853 dated 18.8 .1992, No.AT/CC/P.332/Min/FADS dated 10.9.1993 on the file of the third respondent and letter No.1326413/Pen(S)/59 dated 15.4.1994 on the file of the second respondent, quash the same and consequently direct the respondents to grant pension, gratuity and other attendant monetary benefits with retrospective effect.

2. Today, when the above Writ Petition was taken up for consideration in the presence of the learned Advocate appearing on behalf of the counsel on record sometimes back and upon hearing the learned Senior Central Government Standing Counsel representing the respondents, it comes to be seen that the petitione r served as a Reservist in the Army and challenging denial of pension to him by the respondents, he filed this Writ Petition.

3. The learned Senior Central Government Standing Counsel would submit that while on reserve, the petitioner involved in a murder case and was also convicted to life imprisonment by the Sessions Court, Ramanathapuram Division, Madurai and that he has not put in required 15 years of service so as to become eligible for the pension. The learned Senior Central Government Standing Counsel would also apprise this Court of the Pension Regulation for the Army Part I (1961) and the learned Senior Central Government Standing Counsel would read out para 122 of the same which is extracted hereunder:

"(a) All service from the date of appointment or enrolment/transfer for man's service to the date of discharge shall qualify for pension or gratuity with the exception of:-

(i) to (vi) ....

(vii) Any period of detention in civil custody before being sentenced to imprisonment or fine unless the President, in a special case, issues orders reducing the period that shall not count."

4. The learned Senior Central Government Standing Counsel would clarify that the term 'civil' employed here means other than the defence forces and therefore, in accordance with this Regulation, the petitioner is not entitled to the pension.

5. So far as the order passed by the third respondent in No.AT/5/IV/5853, dated 18.8.1992, which is sought to be quashed is concerned, it has been mentioned therein that since the petitioner has not served for 15 years so as to become eligible for Reservist Pension further stating that the pension already sanctioned was cancelled vide PPO No.S/587/92 with all its entries. According to the said order, due to conviction in a murder case on 11.3.1977, the total service of the petitioner comes to 14 years 8 months and 6 days. In order to show that the petitioner has completed 15 years of qualified service to become eligible for the pension, nothing has been placed before this Court by the petitioner and therefore quashing of the said order as sought for by the petitioner cannot be granted.

6. Regarding the other order passed by the second respondent, which is also sought to be quashed by the petitioner in No.AT/CC/P.332/Min/FADS, dated 10.9.1993, it is seen that this communication has also been sent to the petitioner, which is an appeal preferred by the petitioner as against the rejection of the restoration of Reservist Pension and which has been sent as a reply to the representation of the petitioner dated 16.11.1992 addressed to the Ministry of Defence wherein it has been made clear that while the petitioner was on reserve he had involved in a murder case and was arrested by

civil police and sentenced to life imprisonment w.e.f.11.3.1977 by the Sessions Court, Ramanathapuram Division, Madurai and as his total qualifying service works out to only 14 years and 294 days i.e. less than 15 years, he is not eligible for service pension. It has also been mentioned that the petitioner is not entitled for terminal gratuity as it is admissible to individuals who are discharged on account of misconduct, corruption, lack of integrity and moral turpitude as per the Government of India's letter No.A/14063/A/PS4/91, dated 29.10.1980. Against this telling communication sent also, the petitioner has not placed any material before this Court to substantiate his claim and therefore this Court has no reason to accept the contentions of the petitioner so as to quash the above proceedings or even to grant the pension, gratuity and other attendant monetary benefits much less with retrospective effect as it has been prayed for in the above writ petition and hence the following order:

In result, the above writ petition is devoid of any merit and the same is liable only to be dismissed and is dismissed accordingly.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes

Internet: Yes

Rao

To

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New Delhi.

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